Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
A National Broadband Plan For Our Future	)	GN Docket No. 09-51

COMMENTS OF INTERCALL, INC.

INTERCALL, INC.

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SUMMARY{ TC }

InterCall commends the Commission for release of such a thorough and comprehensive evaluation of the USF contribution mechanisms. InterCall is evaluating the merits of the three proposed alternatives, and does not take a position on which methodology is best to implement at this time. However, if the Commission were to select a telephone numbers-based or connections-based contribution method, the Commission should provide adequate time for the industry to begin tracking the necessary data prior to basing contributions on the methodology. A significant change in contribution methodologies could disrupt established business operations, introduce temporary uncertainty and impose significant transition costs to all contributors. To minimize these disruptions, the Commission must allow enough lead time to permit contributors to track the contribution metric, to develop processes for wholesale sales and to implement solutions that will not distort the underlying market for communications services. Such lead time should begin only after the specific contribution methodology is fully developed.

On the other hand, if the Commission were to continue to base contributions on telecommunications revenues, InterCall supports changes to clarify and simplify USF revenue reporting for stand-alone audio conferencing providers. When stand-alone audio conferencing providers were first required to contribute directly to the USF, many important questions concerning how to apply the rules went unanswered, and prior FCC rules were difficult to apply to the conferencing context. As a result, stand-alone conferencing providers face much uncertainty in their reporting practices today. The changes recommended in these comments will reduce that uncertainty and lead to a more uniform implementation of the USF rules by stand-alone audio conferencing providers.

First, the audio conferencing industry would benefit from a bright-line rule permitting allocation between interstate and intrastate jurisdictions based on a single safe harbor factor. This safe harbor should be based on the average interstate/international percentage of revenue reported on line 417 by all filers over the last two years. This proxy will best estimate the percentage of audio conferencing revenue attributable to interstate or international services.

Second, the Commission should adopt a safe harbor for stand-alone audio conferencing providers reselling toll-free access. Stand-alone providers, by definition, purchase transmission capacity from telecommunications carriers in order to connect participants to their conference bridges. This transmission capacity was described by the Commission as the element of "transmission" subjecting audio conferencing providers to a direct USF contribution obligation. In these circumstances, a reasonable proxy for the revenues attributable to the transmission component would be the long distance or toll-free services purchased by the stand-alone audio conferencing provider in the first place. The use of such a safe harbor would greatly simplify the identification and allocation of revenues attributable to transmission function of audio conferencing.

Finally, with respect to the administration of the Universal Service Fund, InterCall supports the use of an annual contribution factor rather than a quarterly contribution factor. The use of an annual factor will reduce burdens on contributors, who must adjust their USF contribution recovery mechanisms quarterly, and will reduce the impact of seasonal revenue on the contribution factor. The Commission should adopt the proposal to move to an annual factor effective with the January 2013 invoices.

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InterCall, Inc. ("InterCall") by its attorneys, and pursuant to the Further Notice of Proposed Rulemaking issued in the above-captioned proceedings,[1] hereby files these Comments on reform of the universal service fund contribution system. InterCall does not at this time take a position on the relative merits of the three potential contribution methodologies discussed in the *FNPRM* (revenues-based, telephone numbers-based and connections-based methodologies). InterCall will evaluate the comments filed by proponents of the three methodologies before commenting on the best methodology to implement. If the Commission were to select a telephone numbers-based or connections-based contribution method, the Commission should provide adequate time for the industry to begin tracking the necessary data prior to basing contributions on the methodology. If the Commission were to continue to base contributions on telecommunications revenues, InterCall supports changes to clarify and simplify USF revenue reporting for stand-alone audio conferencing providers.

[1] *Universal Service Contribution Methodology; A National Broadband Plan for our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, FCC12-46 (rel. April 30, 2012) (*FNPRM*).

I. <u>BACKGROUND</u>

InterCall is the largest conferencing and collaboration provider in the world. Founded in 1991, InterCall helps people and companies be more productive by providing advanced, yet easy-to-use audio, event, Web and video conferencing solutions that save time and money. InterCall's web and video conferencing products offer application sharing, multimedia presentations and remote collaboration. Its audio conferencing products offer the full range of features, including reservationless and operator-handled conferencing, event broadcast capabilities, recording, and participant controls.

InterCall is a stand-alone audio conferencing provider. That is, InterCall does not own the long distance, toll-free or other transmission facilities over which audio conferencing is conducted. Instead, it purchases this capacity from telecommunications carriers, such as AT&T, Verizon and CenturyLink. In 2008, the FCC concluded that InterCall's stand-alone audio conferencing services involve "telecommunications" under the Telecommunications Act of 1996 and the *Universal Service First Report and Order*.[2] Consequently, the Commission ordered InterCall and all stand-alone conferencing providers to register with USAC and to begin paying USF contributions directly.[3] Prior to this decision, stand-alone providers had paid USF indirectly, as large end-users of toll-free services, and had not been regulated by the FCC.

Since the *Audio Bridging Classification Order*, InterCall has expended considerable resources to register with USAC and report revenues, track revenues for USF purposes, bill customers for USF contribution obligations and ensure compliance with the FCC's

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2 *Request for Review by InterCall, Inc. of Decision of the Universal Service Administrator*, Order, 23 FCC Rcd 10731 (2008) (*Audio Bridging Classification Order*); *see Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) (subsequent history omitted) (*Universal Service First Report and Order*).

3 *Audio Bridging Classification Order*, 23 FCC Rcd at 10735 (¶ 7).

Universal Service rules. InterCall is intimately familiar with the complexities of revenues-based contributions and with the current administration of the Universal Service Fund. Based on this experience, InterCall offers its suggestions for revisions to the Fund to make it more efficient, equitable and easy to administer.

II. IF THE COMMISSION MOVES TO A NEW CONTRIBUTION METHODOLOGY, IT SHOULD PROVIDE A SUFFICIENT TRANSTION PERIOD TO ALLOW CONTRIBUTORS TO MODIFY THEIR REPORTING AND CUSTOMER BILLING SYSTEMS

Since 1997, the Commission has relied on a revenues-based contribution methodology to assess and apportion USF contribution obligations among telecommunications service providers and other contributors to the Fund. The Commission based USF assessments on end user telecommunications revenues for reasons of administrative ease and competitive neutrality.[4] End user revenues were seen as relatively easy to track, not disadvantaging resellers, and unlikely to distort decisions concerning which service provider to select.[5] These considerations remain equally important today. A significant change in contribution methodologies could disrupt established business operations, introduce temporary uncertainty and impose significant transition costs to all contributors. If the Commission were to shift from a revenues-based system to either a telephone numbers-based or connections-based contribution methodology, the Commission must allow enough lead time to permit contributors to track the contribution metric, to develop processes for wholesale sales and to implement solutions that will not distort the underlying market for communications services.

InterCall has in place systems to bill customers and to assess applicable taxes and related fees (such as USF) on end users. These systems are complex and are customized to

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4 *Universal Service First Report and Order*, 12 FCC Rcd at 9206 (¶ 844).

5 *Id.* at 9207-09 (¶¶ 845-50).

InterCall's operations. InterCall has adapted these systems to be used to bill and collect USF in addition to other end user charges. Thus, InterCall is able to continue to report its end user revenues for purposes of calculating USF contributions.

By contrast, InterCall currently does not track either telephone numbers or connections. InterCall is a large user of telephone numbers today, particularly toll-free numbers made available to customers for conferencing purposes. InterCall does not have in place systems to track the assignment of telephone numbers by end users, nor does it have in place systems to bill customers for telephone number assignments. Similarly, InterCall does not track connections today, regardless of which definition of connections the Commission might ultimately adopt. InterCall monitors these connections only for management of its own telecommunications costs; it does not assign connections to individual customers, nor does it bill customers per-connection charges.

As the *FNPRM* notes, any switch to a telephone numbers- or connections-based methodology would require a transition period in order to adapt to the change.[6] InterCall is not able to calculate the extent of the transition period at this time, however. In order to determine a necessary transition period, InterCall would need to know the precise details of the alternative system that is selected. InterCall cautions that these changes could be significant, particularly for an entity like InterCall that does not already track telephone numbers or end user connections. InterCall recommends that the Commission provide adequate transition periods for contributors to develop and test systems to assess USF contributions. The Commission should err on the side of caution to ensure that a transition to alternative methodologies does not threaten the ability of providers to track and recover their USF contribution costs.

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6 *FNPRM* at ¶ 26.

III. **<u>THE COMMISSION SHOULD CLARIFY AND SIMPLIFY THE CONTRIBUTION OBLIGATIONS OF STAND-ALONE AUDIO CONFERENCING</u>**

Assuming that the Commission retains a revenues-based contribution system, the Commission should clarify and simplify the reporting burdens of stand-alone audio conferencing providers. Specifically, in this section, InterCall recommends two changes that will lessen the complexity faced by stand-alone audio conferencing providers.

In reviewing these proposals, the Commission should be mindful of the history of the Commission's audio bridging classifications. Prior to 2008, the Commission had not asserted any jurisdiction over stand-alone audio conferencing providers. Prior to 2008, there was "an industry-wide understanding and practice of stand-alone audio bridging providers indirectly contributing to the USF through universal service contributions assessed on them by their underlying providers."[7] Wholesale providers of long distance and toll-free services treated stand-alone audio conferencing providers as end users for USF purposes and imposed USF surcharges on the services they purchased.[8] The FCC appeared to agree with this interpretation, as its Enforcement Bureau closed without action two investigations into whether audio conferencing providers were required to contribute to the USF.[9] Thus, prior to 2008, stand-alone audio conferencing providers were not treated as regulated entities before the FCC.

In the *Audio Bridging Classification Order*, the FCC for the first time required stand-alone audio conferencing providers to register with USAC and to pay USF contributions directly. The Order only addressed the issue necessary to resolve InterCall's appeal – whether stand-alone providers should pay USF directly or indirectly. It reached this resolution by finding

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7 *Audio Conferencing Classification Order*, at ¶ 8.

8 *Id.* at ¶ 23.

9 *Id.*

that audio bridging providers provide "transmission," and therefore were required to contribute at least as private carriers under the USF rules.[10] The Commission did not reach a final classification of audio bridging, however, and did not provide further guidance on how to implement the USF reporting rules.

In response to the *Audio Bridging Classification Order*, InterCall and most other stand-alone audio conferencing providers registered with USAC and began submitting revenue reports on the schedule required by the rules. InterCall and the industry implemented new systems, new processes and new allocation methodologies in order to comply with the FCC rules. Many questions were unanswered in this process, and prior FCC rules were difficult to apply to the conferencing context. As a result, stand-alone conferencing providers face much uncertainty in their reporting practices today. The changes recommended below will reduce that uncertainty and lead to a more uniform implementation of the USF rules by stand-alone audio conferencing providers.

These changes are critical to ensure that USF contributions do not distort the marketplace for audio conferencing services. The cost of USF contributions are passed through to end user customers by virtually every audio conferencing provider. In InterCall's experience, a consequence of the high USF contribution factors in place today is that end users are basing their choice among services and service providers based on how much USF is assessed on the service. Customers have reacted to the poor economy with an increased emphasis on reducing communications service costs. These customers without question notice the costs resulting from USF pass-through charges and are placing increased pressure on InterCall to reduce USF charges. Many customers seek exemptions from InterCall's USF contribution recovery charges,

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10 *Id.*, at ¶ 11.

or seek out services from alternative providers either not subject to the USF or who employ more aggressive interpretations of the contribution rules. InterCall believes it often loses individual customers to both types of providers. In short, the market effect of the high USF contribution factor is palpable. Clarification and simplification of audio conferencing providers' obligations will help to reduce the impact that universal service costs have on the market.

A. The Commission Should Adopt a Safe Harbor Allocation of Interstate Revenues for Stand-Alone Audio Conferencing

In the *FNPRM*, the Commission seeks comment on ways to simplify the allocation of interstate and intrastate revenues for USF contributions and reporting purposes.[11] Among the proposals made, the Commission seeks comment on whether to adopt "bright-line rules" for how to allocate revenues between jurisdictions.[12] InterCall supports this approach for stand-alone audio conferencing.

Because stand-alone audio bridging providers are not subject to FCC regulation other than as necessary to contribute to the USF and related funds, audio conferencing providers generally have no other reason to segregate intrastate revenues from interstate revenues. The audio conferencing industry would benefit from a bright-line rule permitting allocation between jurisdictions based on a single safe harbor factor.

The use of a safe harbor allocation factor will avoid the cost of systems to determine the allocation on an individual customer basis. It also will enable providers to predict costs with more certainty, promoting transparency and predictability for end users. If implemented across the industry, the use of a safe harbor also would provide a vehicle for preventing unreasonable discrimination within the audio conferencing services market.

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11 *FNPRM* at ¶¶ 121-42.

12 *Id.* at ¶ 132.

Any safe harbor generated should be specific to audio conferencing services; the Commission should not adopt its proposal to set one factor for all voice services and one factor for all data services.[13] Audio conferencing services have much different characteristics than other voice or data services. There is no reason to believe that a single factor for voice or for data services would approximate the jurisdictional allocation of stand-alone audio conferencing providers.

Instead, InterCall proposes that the Commission use the interstate/international percentage reported on line 417 of the Form 499-A. Line 417 includes "toll teleconferencing," and is the line where stand-alone audio conferencing services are reported. Audio conferencing appears to be the primary service reported on this line after the 2008 *Audio Conferencing Classification Order*.[14] InterCall proposes to take the average of the two most recent years' reports to establish the safe harbor. According to the data reported in Appendix C of the *FNPRM*, the following percentages of interstate/international revenue were reported on line 417:

2010	2011	2 year average
85.9%	89.7%	87.8%

The Commission should permit stand-alone audio conferencing providers to report 87.8% of their assessable audio conferencing revenues as interstate/international revenues. The Commission should also preempt states with intrastate USF funds from imposing USF charges inconsistent with this safe harbor if a stand-alone audio bridging provider takes

13 *Id.* at ¶ 132.

14 *See FNPRM at Appendix C, Table 2 (line 417)* (reporting $1.2, $1.8 and $1.6 billion in revenues). Prior to the inclusion of stand-alone audio conferencing providers in the reporting base, filers reported only $600 million in line 417 revenues.

advantage of the FCC's safe harbor.[15] Preemption is necessary to prevent states from imposing USF contribution charges on the same revenues that are subject to federal USF assessments.

B. The Commission Should Adopt a Safe Harbor for Stand-Alone Audio Conferencing Providers Reselling Toll-Free Access

A typical audio conferencing call is billed at a single per-minute rate per participant. The per-minute rate includes not only the elements that the Commission deemed "transmission" in the *Audio Bridging Classification Order* but also charges for non-telecom features such as participant management, reporting, operator assistance, set-up and other features. In the *Audio Bridging Classification Order,* the Commission found these features to be "offered in conjunction" with transmission, and not integrated with the transmission function.[16] This ruling thus treats audio conferencing as a bundle of transmission (telecommunications) and other services (non-telecommunications). In order to implement this ruling, InterCall and other audio conferencing providers have developed methodologies to allocate revenues between the transmission component and the other features of the services.

In the *FNPRM,* the Commission asks whether any bright-line rules can be implemented to allocate revenues from bundled services. In the case of stand-alone audio conferencing, InterCall recommends an optional bright line rule for reporting the transmission component of audio conferencing services. Specifically, stand-alone providers, by definition, purchase transmission capacity from telecommunications carriers in order to connect participants to their conference bridges. This transmission capacity was described by the Commission as the

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15 *Cf. Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling, or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, Declaratory Ruling, 25 FCC Rcd 15651 (2010) (permitting state USF assessment on nomadic VoIP "so long as a state's particular requirements do not conflict with federal law or policies").

16 *Audio Bridging Classification Order,* at ¶ 12.

element of "transmission" subjecting audio conferencing providers to a direct USF contribution obligation.[17] In these circumstances, a reasonable proxy for the revenues attributable to the transmission component would be the long distance or toll-free services purchased by the stand-alone audio conferencing provider in the first place. In order to provide a bright line rule for reporting this portion, the stand-alone provider should be permitted to report as end user revenues the amount it pays to secure the transmission component from other providers.

Under this method, the stand-alone provider would report on line 417 an end user revenue amount equal to the amount the provider pays its telecommunications supplier for providing the transmission to the audio bridge. The stand-alone provider would be assessed USF on this portion by the Fund, and would be able to assess USF recovery charges on this portion, allocated across all end user customers.

The benefit of using the amount paid to third party providers as the proxy for the transmission component, in addition to its simplicity for stand-alone audio conferencing providers, is its auditability. In the case of an audit by USAC, the Administrator could easily verify the amount paid to transmission providers in order to justify the amount reported on the Form 417. Today's method, by contrast, requires USAC to review allocation methods on a case-by-case basis to determine if they are reasonable under the FCC's standard. Such analysis risks asking USAC to address matters beyond its authority,[18] and leaves providers uncertain as to the sustainability of its allocation practices. The adoption of the proposed bright-line standard would benefit providers and lead to a more efficient administration of the system.

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17 *See Audio Bridging Classification Order*, at ¶ 11.

18 *See* 47 C.F.R. § 54.702(c) (prohibiting USAC from making policy or interpreting unclear laws or rules).

IV. THE FCC SHOULD MAKE USF ADMINISTRATION MORE EFFICIENT AND PREDICTABLE

In addition to the above reforms, InterCall supports changes to simplify USF administration.

A. The FCC should move to an annual USF contribution factor

InterCall supports the Commission's proposal to revise the USF contribution factor on an annual basis instead of a quarterly basis.[19] An annual contribution factor will produce more stable and predictable assessments than today's quarterly method.

A move to an annual contribution factor will be easier to administer for service providers and the Administrator alike. The contribution factor has been volatile over the past few years. Since the 4th quarter of 2008 (when audio bridging providers first began to contribute directly), the quarterly contribution factor has increased or decreased by over one percentage point *nine separate times.*[20] Each time, InterCall receives approximately two weeks advance notice to change the rate in its billing systems. InterCall's customers, in turn, see significantly different USF contribution costs from quarter to quarter. Such volatility stems from many factors, but regardless of the reasons, it is very disruptive to subscribers to have their charges change so substantially so often. An annual factor, by contrast, will require only one change in rates per year and will be easier for contributors to bill to their customers.

In addition, an annual contribution factor will produce a more stable and predictable contribution factor than does the current quarterly contribution factor. In addition to the prior period adjustments noted in the *FNPRM*,[21] the quarterly factor is too influenced by

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19 *FNPRM* at ¶ 353.

20 *See* Attachment 1 (quarterly USF contribution factors).

21 *FNPRM* at ¶ 352.

temporary swings in revenue due to seasonality, contract renewal periods and the like. A switch to an annual contribution factor will eliminate the effects of seasonality and should level out the other factors affecting USF contributions. Moreover, provided the USF program demand remains steady (or declines) and the contribution base is expanded, an annual contribution factor should be more stable from year to year. Experience with the FCC's other revenues-based funds assessed using an annual factor – particularly the TRS Fund and the FCC Regulatory Fees – shows a much more stable contribution factor. These funds function well under an annual factor. InterCall recommends that the Commission similarly shift to an annual factor for the USF.

However, it is important that contributors continue to estimate their assessable revenues on a quarterly basis. The purpose of the 499-Q is to project the revenues the contributor will bill in the upcoming quarter. The contributor is then billed USF for the upcoming quarter using the filer's projected revenues times the applicable contribution factor. The USF obligation is trued-up based on the actual revenues reported on the filer's Form 499-A. Filers receive either credits or additional invoices in a subsequent period, depending upon whether the projections were high or low during the year.

Even if the FCC moves to an annual USF contribution factor, it should retain the Form 499-Q quarterly revenue projections. Such projections are far more accurate on a quarterly basis than they would be, on average, on an annual basis. Therefore, USAC billing based on quarterly estimates is more likely to reflect actual revenues than would a projection made on an annualize basis. This, in turn, will minimize the amount of true-ups that occur after a Form 499-A is filed.

V. CONCLUSION

InterCall compliments the Commission for a thorough and much-needed reexamination of the USF contribution system. InterCall urges the Commission to act swiftly to reform the contribution system as described in these comments.

Respectfully submitted,

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Attachment 1
Federal USF Contribution Rates
Since 4Q 2008

Quarter	USF rate	Change
4Q 2008	11.4%	
1Q 2009	9.5%	**-1.9%**
2Q 2009	11.3%	**1.8%**
3Q 2009	12.9%	**1.6%**
4Q 2009	12.3%	-0.6%
1Q 2010	14.1%	**1.8%**
2Q 2010	15.3%	**1.2%**
3Q 2010	13.6%	**-1.7%**
4Q 2010	12.9%	-0.7%
1Q 2011	15.5%	**2.6%**
2Q 2011	14.9%	-0.6%
3Q 2011	14.4%	-0.5%
4Q 2011	15.3%	0.9%
1Q 2012	17.9%	**2.6%**
2Q 2012	17.4%	-0.5%
3Q 2012	15.7%	**-1.7%**